

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Patrick O'Donnell, Committee Counsel  
Small Claims and Limited Cases Subcommittee  
Hon. Mary Thornton House, Chair  
Cara Vonk, Subcommittee Counsel, 415-865-7669  
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DATE: September 30, 2003

SUBJECT: Small Claims: New Optional Form to Amend Party Name Before Hearing  
(approve form SC-114) (Action Required)

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Issue Statement

Code of Civil Procedure section 116.560 authorizes a small claims plaintiff to amend a claim to include the correct legal name of the defendant. However, procedures for amending the claim currently vary from small claims court to court, including small claims courts within the same county. Some courts require filing and service of an amended claim, others require dismissal and refiling the claim (which could present a statute of limitations problem), and yet others have a very liberal policy of allowing an open-ended local court form to be filed that simply asks the party to describe the amendments with no requirement for giving notice to the other parties in the lawsuit in advance of the hearing. Lack of a uniform procedure or notice to other parties in the case may result in uncertainty for the parties, surprise, and lack of preparation that wastes the parties' and court time if the case must be continued or refiled.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004, approve the *Request to Amend Party Name Before Hearing (Small Claims)* (new form SC-114) for optional use to provide a method for amending a party's name after the claim has been served and before the hearing.

The new optional form is attached at page 5.

### Rationale for Recommendation

The proposed form would provide a uniform statewide method for amending a party's name before the hearing and after service of the claim. The form could be used to amend a plaintiff's claim (form SC-100) or a defendant's claim (form SC-120). The form must be mailed or personally delivered to the other parties in the case after the claim has been served and before the hearing, with optional additional notification by telephone, e-mail, or fax. The form is optional.

The form would be useful in correcting a mistake in the name of a party, for example a defendant's name when the claim is against a business doing business under a fictitious name as provided under Code of Civil Procedure section 116.560. The section states, "plaintiff may request the court at any time, whether before or after judgment, to amend the plaintiff's claim or judgment to include both the correct legal name and the names or names actually used by the defendant."<sup>1</sup>

The judge can grant or deny the request to correct a party's name at the hearing or continue the hearing if necessary. In small claims court the defendant does not file a written response to the plaintiff's claim, but only has to show up at the hearing to defend the action.

### Alternative Actions Considered

The committee circulated for comment a proposed form that also would have allowed a party to correct the amount owed and to make other amendments to the claim. The Rules and Projects Committee (RUPRO) was concerned that such a form would permit amendment beyond the name change amendment authorized by Code of Civil Procedure section 116.560 and that the Judicial Council should use judicial restraint in enacting rules and forms.

The Civil and Small Claims Advisory Committee agreed with RUPRO and revised the form to provide for a request to amend name only. At a future date the committee will consider circulating for comment a proposal to amend the Small Claims Act to allow for the correction of the amount owed and other amendments to a claim.

The proposed form also does not address amendment after the hearing. Under Code of Civil Procedure section 116.630, a request can be made to amend a party's name after judgment, and the party has a right to respond to such a request. Under these circumstances the small claims judge must schedule a new hearing and the clerk of the

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<sup>1</sup> The proposed form also could be amended in the future to allow a party to correct the amount owed, or to make other changes to correct facts or alter the relief requested, should a future proposal to amend the Small Claims Act be supported, as discussed below.

court must serve notice of the hearing on the defendant. The committee sought comment on whether it should develop another form for postjudgment amendment. Several commentators agreed that a postjudgment name change only form would be helpful. This proposal has been placed on the committee work plan.

#### Comments from Interested Parties

Comments received were based on the form that circulated for comment. This form would have allowed a request to amend not only parties names, but also to amend the amount owed or other amendments, provisions that have been eliminated. Many comments concerned provisions on the form that have been eliminated. Therefore only those comments that relate to the proposed request to amend name form are discussed below.

Thirty-three comments were received. Of those, 21 agreed with the form as drafted and five agreed with the form if certain aspects of the form were amended. Seven commentators did not agree that the form should be approved.

Of those who opposed the form, two courts said that the party seeking to amend should file an “amended” claim instead. The committee believes that an amended claim should be filed and served only if parties in the case have not yet been served with the original claim. If the original claim was served, the opposing party is on notice that he or she is involved in a lawsuit and also of the general nature of the claim. The need to amend details in the claim could be discovered at any time before the hearing and amendment should be allowed in a manner that is cost effective and less formal than service of process of the original claim. The form permits mailing or personal service of the request to amend and the judge would decide at the hearing whether the opposing party received sufficient notice to proceed with the amended claim. Alternatively, a party could dismiss and refile a case if the statute of limitations has not yet run. The proposed form was amended to add a statement identifying those alternatives under the new “Important Notices” instructions at the top of the form.

The committee agreed with an attorney and the Superior Court of Orange County who opposed the form because it went beyond the statute that allows for amending the name of a party only.

A small claims advisor opposed the form because it is optional and thought that it should be mandatory. Another small claims advisor opposed the form because it does not specify a minimum number of days for service before the hearing, and urged that last-minute requests will blindsides the opposing party or that the request will be mailed at the last minute or not at all. Another advisor was opposed because the form did not

adequately address service. The subcommittee noted that sufficient advance notice of the request to amend claim before hearing would be a factor in the court's decision to grant the request, deny it, or continue the hearing to provide more time to prepare a defense to the amended claim. A notation to this effect was added under the new "Important Notices" instructions at the top of the form: "A decision on your request to amend claim will be made at the hearing. The judge can grant or deny your request or continue the hearing."

Several suggestions for improving the form were incorporated into the form. There was consensus among committee members that the purpose of the form is to limit surprise by giving notice of the request to the other side before the hearing so that the parties may be better prepared. This could benefit everyone, including the court, by saving time and avoid the need for a continuance.

The comment chart and subcommittee responses are attached at pages 6–15.

#### Implementation Requirements and Costs

In courts that did not previously permit filing of an amendment or request to amend the claim, there would be some costs associated with filing the request to amend form.

Attachment

This page 5 is intended for form:

SC-114 (draft 7, 9/29/03) click [sc-114.v7.092903.pdf](#)

<b>PARTY (Name and address):</b>  <b>TELEPHONE NO. (Optional):</b> <b>E-MAIL ADDRESS (Optional):</b> <b>FAX NO. (Optional):</b>		<b>FOR COURT USE ONLY</b>          <b>DRAFT 7</b> <b>9/29/03</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  <b>STREET ADDRESS:</b> <b>MAILING ADDRESS:</b> <b>CITY AND ZIP CODE:</b> <b>BRANCH NAME:</b>		
<b>PLAINTIFF:</b> <b>DEFENDANT:</b>		
<b>REQUEST TO AMEND PARTY NAME BEFORE HEARING (SMALL CLAIMS)</b>		
		<b>CASE NUMBER:</b>
<b>IMPORTANT NOTICES</b>  A copy of this request must be mailed or personally delivered to each of the other parties in this case if your claim has already been served. File the original request with the court and keep a copy.  If your claim has not yet been served, you should <b>not</b> file this form. File and serve an "amended" claim to correct the parties' names (form SC-100 or SC-120) instead. Or dismiss your claim and start over by filing a new claim if the statute of limitations on your claim has not run out.  A decision on your request to amend your claim will be made at the hearing. The judge can grant or deny your request or continue the hearing.		

## REQUEST

1. I am the ☐ plaintiff ☐ defendant in this case.
2. I request that my small claims claim be changed to amend parties' names as follows (*explain*):
3. a. A copy of this request was ☐ mailed ☐ personally delivered to each of the other parties in this case  
on (*date*): \_\_\_\_\_ at the following address (*specify name and address*): \_\_\_\_\_
- b. ☐ (*Optional*) Each of the other parties was also notified of this request by ☐ telephone ☐ e-mail ☐ fax  
on (*date*): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

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**Small Claims: Request to Amend Claim Before Hearing (Small Claims)**  
**(new optional form SC-114)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Ms. Rachelle Agatha Executive Officer Superior Court of California, County of Amador	A	N	None.	
2.	Hon. Ronald L. Bauer Orange County Rules and Forms Committee Superior Court of California, County of Orange	N	Y	The Rules and Forms Committee of the Superior Court of Orange County felt that there should not be a prehearing form to amend the claim and that a posthearing form only allowing a request for name change would be more appropriate.	The committee believes that a prehearing form to amend party's name as authorized in CCP§116.530 will serve the public and the courts by improving notice and limiting surprise.  A postjudgment form to request a name change will be put on the committee work plan for future development.
3.	Mr. Saul Bercovitch The State Bar of California	A	Y	Committee on Administration of Justice supports the proposal to adopt new optional form SC-114, which would allow a party in a small claims case to request that the claim be amended before the hearing, and would contain a required proof of service. The form is easy to read, understand, and follow. It would assist a small claims litigant in requesting an amendment of a judgment. Yet, since it is not mandatory, it would not prejudice a small claims party who was unaware of it.  CAJ also supports the development of a new form dealing solely with the issue of amending the defendant's <i>name</i> on a judgment in a small claims case. CAJ believes it would be beneficial to develop a form that would combine the plaintiff's request to amend the judgment and request for a hearing, with a	A postjudgment form to request a name change will be put on the committee work plan for future development. The State Bar CAJ proposals for format of the form will be noted for consideration.

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				portion of the form to be used by the clerk of the court to set a date for the hearing and a portion for proof of service by the clerk, providing notice of the hearing.	
4.	Mr. Greg Blevins Attorney Tulare County Small Claims Advisor	A	N	None.	
5.	Mr. Allen J. Capeloto Small Claims Advisor Superior Court of California, County of San Mateo	N	N	<p>Correct designation of parties can always be made efficiently at time of trial. I think it would be good to mandate a form like this to amend the claim itself, or the amount of damages sought, but not if the form is optional. If it is optional only, and indeed the statute does not mandate any advance notice of an amended claim, then a savvy claimant will never use the form. They would rather catch the responding party by surprise at time of trial.</p> <p>I would support a clerk's form of notice in postjudgment hearings, but would not advocate allowing claims to be amended postjudgment, other than a name change. Small claims litigants are generally emotional about their cases. To allow postjudgment amendments of claims might very well open the floodgates to successful litigants who did not get their full pound of flesh at time of trial.</p>	<p>The committee believes that the form should remain optional, leaving it up to a party whether he or she wants to give the court and the opposing side advance notice of the request to amend the claim. Sufficient advance notice could be a factor in the court's decision to grant the request. A mandatory form would require legislation.</p> <p>A postjudgment form to request a name change will be put on the committee work plan for future development.</p>
6.	Ms. Monique Chavez Supervisor Civil & Small Claims Superior Court of California,	AM	N	Immediately under the title "Request," add: "THE JUDGE CAN GRANT OR DENY THE REQUEST AT THE HEARING, OR CONTINUE THE HEARING."	The committee agreed with this suggestion and added it in a box at the top of the form labeled "Important Notices" together with the suggestion made by a clerk at the



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	County of Los Angeles				Superior Court of Santa Cruz County under no. 15, below. These instructions will inform the requestor about what to expect at the hearing.
7.	Ms. Janet Deffebach Supervising DC II Superior Court of California, County of Los Angeles, Alhambra Court	A	N	None.	
8.	Ms. Sue DuFour Supervising Legal Clerk II Superior Court of California, County of Stanislaus	N	N	File an amended claim instead.	This comment and a similar comment under no. 15, below, has caused the committee to make a clarification in the new “Important Notices” instructions at the top of the form. A statement has been added that this form should be used only when the other side has been served. If the claim has not yet been served, the appropriate method to amend the claim would be to file an amended claim.
9.	Ms. Christine Fabris Court Services Coordinator Mediation Center of San Joaquin County	A	N	None.	
10.	Mr. Stan Ferrell, ADOC Superior Court of California, County of Los Angeles	A	N	None.	
11.	Mr. Robert Gerard President Orange County Bar Association	N	Y	Because this procedure is not provided for by statute and because it could be taken advantage of by Plaintiffs, it should not be implemented.	The committee disagrees in part. The optional form gives the plaintiff and the defendant (if a defendant claim was filed) an opportunity to provide notice of the

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					request to amend name ahead of the hearing under CCP§116.560 and 116.630. This could result in better preparation for the hearing and savings in court time.
12.	Ms. Barbara Hefner Supervisor, Limited Jurisdiction Superior Court of California County of Merced	A	N	None.	
13.	Ms. Lisa Hillegas Staff Attorney Legal Services of Northern California	AM	N	For item 2 on the form, I would like to see a reference to being able to add information, especially under 2c, in an attachment. Pro pers may not understand they can do this otherwise.	The committee did not agree to amend the form to encourage attachments. The intent of the form is to keep the proceedings simple and merely provide notice of the requested amendment. Attachments could be provided at the hearing as evidence in support of the claim.
14.	Ms. Nancy Iler Supervisor Superior Court of California, County of San Benito	A	N	None.	
15.	Ms. Maida Jacobo Legal Process Clerk Superior Court of California, County of Santa Cruz	AM	N	Do not agree to make new form. Item 2b would probably be used by defendants arguing about the amount they think they owe and go into detail, possibly a long description of how much they think they owe. I think that 2b should only be used if <u>increasing</u> the dollar amount so it should be an amended judgment or not. I think this form should <u>not</u> be created. I think any issues can be settled at the time of the hearing (in Santa Cruz County).	The committee has deleted item 2b, “amend amount owed,” from the form.

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				<p>The plaintiff can file an amended claim if we have proof of <u>nonservice</u> or if they can provide the service papers. If anyone is served or we have no proof of nonservice, the plaintiff would need to attend the hearing and ask the judge for permission to file an amended claim. If this form is created, then it should be an option in every county to use it. A decision will be made at the hearing once all appropriate parties are served with the original claim.</p> <p>Under item:1 Add a box for “cross defendant” and a box for “cross plaintiff.”</p> <p>Under item 2b: <input type="checkbox"/>amend amount owed, add the words “increase to \$_____”.</p> <p>Omit items 3a. and 3b.</p>	<p>The committee agrees that this form should be used only after the claim has been served on the opposing side and that the judge would grant or deny the request at the hearing, or continue the hearing. The committee has added a clarifying instruction at the top of the form. (See also response under no. 8, above.)</p> <p>The committee did not agree with this suggestion. The small claims parties are either a defendant or a plaintiff in the action. A defendant would file a “defendant’s claim” if the defendant had a cross-claim.</p> <p>As noted above, the committee has deleted item 2b.</p> <p>The committee disagrees with this suggestion. The purpose of the form is to give advance notice to the other side that a request to amend is being made. Therefore, the opposing party should be provided with notice of the request before the hearing.</p>

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				In the footer add, “A decision will be made at the hearing once all appropriate parties are served with the original claim.”	The committee agrees with this suggestion and has incorporated it into the “Important Notices” box at the top of the form. See also committee response under no. 6, above.
16.	Ms. Carol Johnson Supervising Clerk — Civil and Small Claims Superior Court of California, County of Kern	A	N	None.	
17.	Ms. Michele Martin Lee Deputy Clerk Supervisor Superior Court of California, County of Los Angeles	A	N	Item 3a does not apply to all cases because before the hearing most cases have not been served prior to filing the request to amend.	The committee has corrected the form to clarify that this form would be used only after the claim has been served. See also the committee’s comment under no. 15, above.
18.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	N	N	<p>Parties file a motion to amend postjudgment and it works fine. Another form is not necessary.</p> <p>We’re not sure of the purpose of the form. It is confusing and ambiguous. If the parties use the form and we file it, the parties may assume changes were made. Re item 3, why is it okay to mail? Shouldn’t</p>	<p>The committee believes that a postjudgment form to amend a name might help small claims litigants obtain a court order and save court time explaining the process. A postjudgment form to request a name change will be put on the committee work plan for future development.</p> <p>The purpose of the form is to provide advance notice of the request to amend before the hearing. If the form is provided to the opposing party in advance of the</p>

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				service be the same as for the claim?	hearing, the committee believes that the parties will be better prepared, court time may be saved at the hearing, and a continuance may not be required. The form may be mailed because the claim itself has already been served. The form has been amended to clarify that the judge will decide whether to grant or deny the request at the hearing. See also committee's response under no. 6, above.
19.	Ms. Kelli Lyerla Paralegal/Small Claims Advisor Napa County Counsel	A	N	Postjudgment amendments should be limited to name changes/corrections.	A postjudgment form to request a name change will be put on the committee work plan for future development.
20.	Ms. Wanda Mackey Court Services Supervisor — Civil Superior Court of California, County of Shasta	AM	N	Paragraph #1 of the invitation to comment suggests that this form could be used to “add names of additional defendants.” Paragraph #6 states the form must be mailed or delivered to the other parties (presumably the already-served parties), and the judge can grant or deny the request at the hearing, or continue the hearing. Since any “additional defendant,” would have to be properly served with the plaintiff's claim and order and would not be present at the hearing, it would have to be continued. This would seem to be a waste of courtroom time. If this form is to be used to add new defendants, the matter should be automatically continued to allow for service, and the plaintiff should pay the \$10 fee.	The committee notes that the invitation to comment suggesting that the form could be used to add defendants is in error. The form that circulated for comment does not provide an option to add defendants.
21.	Ms. Sandra Mason	A	N	There is no need in this county for postjudgment	A postjudgment form to request a name

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	Director of Civil Operations Superior Court of California, County of San Luis Obispo			request for other than a name change. There is concern that there is potential for abuse by providing such a form.	change will be put on the committee work plan for future development.
22.	Ms. Laraine Noel Court Services Supervisor Superior Court of California, County of Trinity	A	N	None.	
23.	Ms. Christine Norman, LPA II Superior Court of California, County of San Bernardino (Big Bear Lake)	A	N	None.	
24.	Mr. Scott D. Reep Attorney Small Claims Advisor Contra Costa County	AM	N	<ol style="list-style-type: none"> <li>1. The footer should be changed to include the word CLAIM.</li> <li>2. Bottom righthand corner should probably also refer to Code of Civil Procedure section 473.</li> <li>3. I would include a statement above the declaration that says something like: "4. The interests of justice will be served by allowing this requested amendment to my claim."</li> </ol>	<p>The committee agreed with this suggestion and added "claim" to the title in the footer of the form.</p> <p>The committee agreed with the suggestion that a reference to Code of Civil Procedure section 473, which allows a court to amend pleadings in the interest of justice and provide relief from mistake, be added in the footer as a reference.</p> <p>The committee did not agree with this suggestion. The committee believes that this concept is already implied in the request, and it would like to keep the form simple.</p>
25.	Ms. Nora Shea Court Supervisor II	A	N	None.	

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	Superior Court of California, County of San Francisco				
26.	Ms. S. Stuchlik Court Section Supervisor Superior Court of California, County of Alameda	A	N	None.	
27.	Mr. Richard K. Uno Managing Attorney Human Rights/Fair Housing Commission of the City and County of Sacramento	N	N	The proposed form does not have a minimum amount of days before the hearing that the request to amend may be submitted. The dangers are (1) that litigants will submit the requests at the last minute and therefore blindside the opposing party and (2) that litigants not acting in good faith will fail to actually mail a copy of the request to amend to the opposing party or do so at the last minute.	The purpose of the form is to limit surprise by giving notice of the request to the other side and to avoid last-minute amendments that might prompt a continuance. The court can decide at the hearing whether (1) sufficient notice was provided to allow the hearing to proceed or (2) if insufficient notice was provided to deny the request or (3) continue the hearing.
28.	Ms. Judi Waterman Managing Attorney Superior Court of California, County of Fresno	A	N	It is requested that consideration be given to including an order section on this form.	The committee disagreed with this suggestion. The court would decide whether to grant or deny the request at the time of the hearing.
29.	Ms. Jan Weaver, Supervisor Superior Court of California, County of Placer	A	N	None.	
30.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	None.	
31.	Ms. Anita Wilcox Small Claims Advisor San Luis Obispo Small	N	N	The form does not adequately address service of process — who serves the defendant the papers? Need language “18 years of age not a party to the	The committee does not agree that service of the request must be the same as for service of the claim. It has, however,

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	Claims Advisory			action” and “person serving” — name, address, phone. What is the prescribed time frame to serve defendant with amended claim? 15/20 days prior to trial date? The code does not offer a time frame that I can see.	amended the notice provisions under items 3a and 3b to clarify that the party does not have to personally notify the other party of the request, but only that a copy “has been [ ] mailed [ ] personally delivered on (date) _____.” In response to the question about timing of notice of the request, see committee response under 27, above.
32.	Ms. Millie Wise Legal Process Supervisor Superior Court of California, County of San Joaquin	A	N	<p>The small claims staff really likes this form since the litigant completes the form and indicates what change he or she wants to make.</p> <p>There should be a separate order form to use postjudgment. The postjudgment amendment should be for name change only.</p>	<p>The committee has limited the changed to “amend parties’ names” and will recommend circulating for comment a legislative change to amend “amount owed” and “amend other.”</p> <p>A postjudgment form to request a name change will be put on the committee work plan for future development. At that time it will review the suggestion for a separate order form.</p>
33.	Ms. Jodi Wrigley Court Services Supervisor Superior Court of California, County of Shasta	A	N	None.	